

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

KELLY GUERRERO,  
 Plaintiff(s),

v.

VINCENT NEIL WHARTON,  
 Defendant(s).

Case No. 2:16-cv-01667-GMN-NJK  
**ORDER**  
 (Docket No. 51)

Pending before the Court is Defendant's motion to compel. Docket No. 51. For the reasons discussed more fully below, the motion is hereby **DENIED** without prejudice.

"Discovery is supposed to proceed with minimal involvement of the Court." *F.D.I.C. v. Butcher*, 116 F.R.D. 196, 203 (E.D. Tenn. 1986). Counsel should strive to be cooperative, practical and sensible, and should seek judicial intervention "only in extraordinary situations that implicate truly significant interests." *In re Convergent Techs. Securities Litig.*, 108 F.R.D. 328, 331 (N.D. Cal. 1985). A threshold issue in the review of any motion to compel is whether the movant made adequate efforts to resolve the dispute without court intervention. *Cardoza v. Bloomin' Brands, Inc.*, 141 F. Supp. 3d 1137, 1145 (D. Nev. 2015). Federal Rule of Civil Procedure 37(a)(1) requires that the party bringing a motion to compel discovery must "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." The Local Rules further expound on this requirement, providing that discovery motions will not be considered "unless the movant (1) has made a good faith effort to meet and confer . . . before

1 filing the motion, and (2) includes a declaration setting forth the details and results of the meet-and-  
2 confer conference about each disputed discovery request.” Local Rule 26-7(c).

3 Judges in this District have held that these rules require that the movant must “personally engage  
4 in two-way communication with the nonresponding party to meaningfully discuss each contested  
5 discovery dispute in a genuine effort to avoid judicial intervention.” *ShuffleMaster, Inc. v. Progressive*  
6 *Games, Inc.*, 170 F.R.D. 166, 171 (D. Nev. 1996). The consultation obligation “promote[s] a frank  
7 exchange between counsel to resolve issues by agreement or to at least narrow and focus matters in  
8 controversy before judicial resolution is sought.” *Nevada Power v. Monsanto*, 151 F.R.D. 118, 120  
9 (D.Nev.1993). To meet this obligation, parties must “treat the informal negotiation process as a  
10 substitute for, and not simply a formalistic prerequisite to, judicial resolution of discovery disputes.”  
11 *Id.* This is done when the parties “present to each other the merits of their respective positions with the  
12 same candor, specificity, and support during the informal negotiations as during the briefing of discovery  
13 motions.” *Id.* To ensure that parties comply with these requirements, movants must file certifications  
14 that “accurately and specifically convey to the court who, where, how, and when the respective parties  
15 attempted to personally resolve the discovery dispute.” *ShuffleMaster*, 170 F.R.D. at 170.<sup>1</sup> Courts may  
16 look beyond the certification made to determine whether a sufficient meet-and-confer actually took  
17 place. *See, e.g., Cardoza*, 141 F. Supp. 3d at 1145.

18 Defendant’s motion to compel lacks certification of a sufficient pre-filing conference. While the  
19 parties discussed the disputed objections during Plaintiff’s deposition, they did not address the issues  
20 with the same level of detail and legal support as they would during briefing a discovery motion. *See*  
21 *Nevada Power*, 151 F.R.D. at 120. Indeed, counsel presented one another with no legal authority to  
22 support their positions during that exchange.

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27 <sup>1</sup> These requirements are now largely codified in the Court’s local rules. *See* Local Rule 26-7(c),  
28 Local Rule IA 1-3(f).

1 Accordingly, the motion to compel is **DENIED** without prejudice.

2 IT IS SO ORDERED.

3 DATED: January 22, 2018

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6 NANCY J. KOPPE  
7 United States Magistrate Judge  
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